

Council of Scientific Industrial Research v. Dilbag Singh Sian
(G. R. Majithia, J.)

as averred to in the application for recalling the order, the certified copy of the order,—*vide* which the appeal was dismissed as withdrawn was made available to the appellant's wife on April 15, 1986, and the application to recall the order was moved on April 24, 1986. This circumstance supports the appellant's version that the withdrawal was made without his consent. The Advocate could not in the absence of a specific power given to him withdraw the appeal. He has exceeded his authority. A responsible counsel in normal circumstances would have acted more cautiously and would not have withdrawn the appeal in the absence of the client or his authorised agent appearing with the Advocate on the date of hearing. I cannot commend the manner in which the application was disposed of by the first Appellate Court. It ought to have gone into the merits of the allegations made therein after recording evidence and then decided the same, of course on evidence he could have arrived at the same conclusion. The courts have to act cautiously while passing order of the kind as in the present case. I do not think it proper to comment upon the conduct of the lawyer which to say the least cannot be condescended.

(6) For the aforementioned reasons the revision petition is allowed. The order dated April 28, 1989 dismissing the application for recalling the order,—*vide* which the appeal was dismissed as withdrawn is set aside. The appeal is restored against its original number and the same will be disposed of expeditiously after notice to the parties.

R.N.R.

Before G. R. Majithia, J.

COUNCIL OF SCIENTIFIC INDUSTRIAL RESEARCH,—*Petitioner.*

versus

DILBAG SINGH SIAN,—*Respondent.*

Civil Revision No. 2354 of 1989.

20th December, 1989.

Administrative Tribunals Act—1985-Ss. 14, 19 and 29—C.S.I.R. filing suit for eviction of residential accommodation against

employee—Application filed under S. 29 of the Act for transfer of suit to the Central Administrative Tribunal, Chandigarh—Allowing residential accommodation being a condition of service dispute is required to be adjudicated upon by the Tribunal—Civil Court has no jurisdiction.

Held, that the allotment of residential accommodation to an employee may be pursuant to the contract of service or incidental to the service or a concession shown to the employee but it will fall within the ambit of terms of conditions of employment and if a dispute arises relating to it, the matter has to be decided by the Tribunal. (Para 5)

Petition under Section 115 C.P.C. of Act V of 1908 for revision of the order of the Court of Shri H. C. Suman, Senior Sub Judge, Chandigarh, dated 30th May, 1989 dismissing the application of the petitioner for transferring the Civil suit titled The Council of Scientific and Industrial Research, Raji Marg, New Delhi-1 v. Shri Dilbagh Singh Sian to the Central Administrative Tribunal, Chandigarh.

CLAIM—Suit for permanent mandatory injunction requiring the defendant to vacate quarter No. C-60, C.S.I.O., Colony, Sector 30, Chandigarh, bounded as follows :—

East — Quarter C-59

West — Quarter C-64

North — Frant open

South — Back open

with a further direction to the defendant not to interfere with the possession of the Plaintiff in any manner.

AND

for the recovery of Rs. 22,763.45 as detailed in para No. 18 of the plaint, and future damages for wrongful use and occupation of the quarter till vacation of the said quarter with interest and costs therefor.

Claim in Revision:—For reversal of the order of the Lower Court.

Anil Malhotra, Advocate, for the Petitioners.

Vinod Kumar Sharma, Advocate, for the Respondents.

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JUDGMENT

G. R. Majithia, J.

(1) This revision petition is directed against the order of the Senior Subordinate Judge, Chandigarh dismissing the application of the petitioner for transferring the civil suit titled The Council of Scientific and Industrial Research, Rafi Marg, New Delhi-1 vs. Shri Dilbagh Singh Sian to the Central Administrative Tribunal, Chandigarh.

The facts :-

(2) The petitioner is a Society registered under the Societies Registration Act. It framed its regulations and bye-laws which were duly approved by the Government of India. Bye-law 5 of the Bye-laws provides that the Director General may authorise the Joint Secretary (Administration) or any other officer to file and defend suits and other proceedings on behalf of the Society. The Director General authorised the Legal Advisor to file this revision petition.

(3) The respondent is an employee of the petitioner. Before transfer, he was posted at Chandigarh and was allotted quarter No. C-60, C.S.I.R. Colony, Sector 30, Chandigarh. He was transferred to Calcutta,—*vide* order dated July 30, 1984 and on his transfer he was ordered to vacate the quarter. He unsuccessfully challenged the order of transfer before the Central Administrative Tribunal, Chandigarh Bench, Chandigarh. The judgment was rendered on December 10, 1987. A civil suit for mandatory injunction requiring the respondent to vacate the quarter and for recovery of mesne profits was filed by the petitioner in the Civil Court at Chandigarh. An application was filed under Section 29 of the Administrative Tribunals Act, 1985 (for short the Act) for transfer of the suit to the Central Administrative Tribunal, Chandigarh. The same was declined on May 30, 1989.

(4) The Subordinate Judge after referring to the provisions of Sections 9 and 20 of the Act came to the conclusion that the matter has to be adjudicated upon by the Civil Court and that the application for transfer is lacking in bona fide. The approach of the

trial court is unsustainable at law. The Act was enacted to provide for the adjudication by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation or society owned or controlled by the Government in pursuance of Article 323-A of the Constitution. The purpose was for expeditious disposal of the disputes between the employers and the employees. Allowing residential accommodation to its employee during the period of employment may be pursuant to the terms and conditions of employment or a concession granted by the employer to the employee. Nevertheless it will partake the condition of service. An employee posted at a particular station during the course of employment may be allotted residential accommodation. If he/she is transferred from that place, the employer has a right to have immediate possession of the premises. The respondent was transferred to Calcutta as far back as July 30, 1984. He did not vacate possession of the quarter allotted to him during his posting at Chandigarh when called upon to do so necessitating the filing of the civil suit for permanent mandatory injunction to vacate the quarter. Section 29 of the Act reads thus:—

“Transfer of pending cases—(1) Every suit or other proceeding pending before any court or other authority immediately before the date of establishment of a Tribunal under this Act, being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it had arisen after such establishment, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

(2) Every suit or other proceeding pending before a court or other authority immediately before the date with effect from which jurisdiction is conferred on a Tribunal in relation to any local or other authority or corporation (or society), being a suit or proceeding the cause of action whereon it is based is such that it would have been, if it

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had arisen after the said date, within the jurisdiction of such Tribunal, shall stand transferred on that date to such Tribunal:

Provided that nothing in this sub-section shall apply to any appeal pending as aforesaid before a High Court.

Explanation.—For the purposes of this sub-section “date with effect from which jurisdiction is conferred on a Tribunal”, in relation to any local or other authority or corporation (or society), means the date with effect from which the provisions of sub-section (3) of Section 14 or, as the case may be, sub-section (3) of Section 15 are applied to such local or other authority or corporation (or society.)

- (3) Where immediately before the date of establishment of a Joint Administrative Tribunal any one or more of the States for which it is established, has or have a State Tribunal or State Tribunals, all cases pending before such State Tribunal or State Tribunals immediately before the said date together with the records thereof shall stand transferred on that date to such Joint Administrative Tribunal,

Explanation.—For the purposes of this sub-section “State Tribunal” means a Tribunal established under sub-section (2) of Section 4.

- (4) Where any suit, appeal or other proceeding stands transferred from any court or other authority to a Tribunal under sub-section (1) or sub-section (2).
- (a) the court or other authority shall, as soon as may be after such transfer forward the records of such suit, appeal or other proceeding to the Tribunal; and
- (b) the Tribunal may, on receipt of such records, proceed to deal with such suit, appeal or other proceeding, so far as may be, in the same manner as in the case of an application under section 19 from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

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- (5) Where any case stands transferred to a Joint Administrative Tribunal under sub-section (3), the Joint Administrative Tribunal may proceed to deal with such case from the stage which was reached before it stood so transferred.
- (6) Every case pending before a Tribunal immediately before the commencement of the Administrative Tribunal's (Amendment) Act, 1987, being a case the cause of action whereon it is based is such that it would have been, if it had arisen after such commencement, within the jurisdiction of any court, shall, together with the records thereof, stand transferred on such commencement to such court.
- (7) Where any case stands transferred to a court under-sub-section (6), that court may proceed to deal with such case from the stage which was reached before it stood so transferred.

(5) It postulates that every suit pending before any Court or any other authority immediately before the date of establishment of a Tribunal under this Act, based upon a cause of action if it had arisen before the establishment of the Tribunal would have been tried by it would stand transferred to such Tribunal. The expression "cause of action" can compendiously define to mean every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. It has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed by the plaintiff. It refers entirely to the grounds set forth in the plaint to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. In the suit, the petitioner has to allege and prove as to how the possession was given to the defendant and on what ground he has been asked to hand over the possession to it. As observed earlier, the allotment of residential accommodation to an employee may be pursuant to the contract of service or incidental to the service or a concession shown to the employee but it will fall within the ambit of terms of conditions of employment and if a dispute arises relating to it, the matter has to be decided by the Tribunal.

(6) If an identical matter arises after the creation of the Tribunal it would be considered by it. Similarly, if a matter has arisen

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before the creation of a Tribunal and is pending before the Civil Court, it has to be transferred to the Tribunal as envisaged in Section 29 of the Act. Section 14 of the Act relates to the jurisdiction of the Central Administrative Tribunal. Clause (c) of Section 14 of the Act provides that all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or society or other body, at the disposal of the Central Government for such appointment. All service matters include matter relating to conditions of service of persons in employment of society. Section 19 of the Act deals with the procedure for moving the Tribunal. Sections 14, 19 and 29 of the Act have to be harmoniously construed. Where the language of an Act is clear and explicit, said Viscount Simon in *King Emperor vs. Benoarie Lal Sharma and others*, we must give effect to it whatever may be the consequences for in that case the words of the statute speak the intention of the legislature. These provisions have to be construed in a manner where each provision must be given due effect and the only conclusion is that all matters relating to conditions of service of employment shall be adjudicated upon by the Tribunal under the Act.

(7) Thus for the reasons stated above, the order under challenge is set aside. The suit stands transferred on the file of the Central Administrative Tribunal, Chandigarh Bench, Chandigarh. The Subordinate Judge will send the file to the Tribunal within one week from the date of the receipt of the order. Parties through their counsel are directed to appear before the Tribunal on 5th February, 1990.

(1) AIR 1945 Privy Council 48.

R.N.R.